BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 222 of 2012

Date of Decision : 26.06.2013

Vikas Ganeshmal Bengani
2 Devkaran Mansion,
2nd Floor, 63B Princess Street,
Mumbai – 400 002. …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. …Respondent

Dr. S.K. Jain, Practicing Company Secretary for the Appellant.

Mr. Kumar Desai, Advocate for the Respondent.

CORAM : Jog Singh, Member & Presiding Officer (*Offg.*)
A.S. Lamba, Member

Per : Jog Singh (Oral)

1. This appeal has been filed by the appellant challenging the impugned order dated September 17, 2012 passed by the Adjudicating Officer, Securities and Exchange Board of India ("SEBI") imposing a penalty of Rs. 2 lac on the Appellant for violating the provisions of Regulations 3(a),(b),(c),(d), 4(1) and 4(2), (a) & (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (for short FUTP Regulations) under Section 15HA of the SEBI Act, 1992.

2. The SEBI conducted an investigation into buying, selling and dealing in the shares of M/s. T. Spiritual World Ltd., hereinafter referred to as “TSWL”, a company listed on the Bombay Stock Exchange and the Calcutta Stock Exchange, for the period from July 12, 2004 to February 4, 2005. The investigation revealed that a group of clients, including the Appellant connected to “TSWL” and to each other one way or the other, had dealt in the scrip of “TSWL” in a fraudulent and manipulative manner during the period under investigation that created false and misleading appearance of trading, artificial volume and price manipulation in the scrip facilitating the promoters to offload their shareholding. Thus, it is established that the Appellant had executed fraudulent trades in the scrip of “TSWL” which created false and misleading appearance of trading and artificial price rise in the scrip.

3. A show cause notice was accordingly issued on January 31, 2012 under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 as to why an inquiry should not be held against him and penalty be not imposed for violating the above said provisions of the FUTP Regulations. On a consideration of the material that was collected during the course of the enquiry and also the reply filed by the appellant, the Adjudicating Officer came to the conclusion that the appellant had violated the aforesaid provisions and imposed a penalty of Rs. 2 lac as stated above vide its order dated September 17, 2012. It is against this order that the present appeal has been filed.

4. We have heard both the learned counsel for the parties at length and have analysed the facts and pleadings in detail. Learned counsel for the Appellant submits that he had executed trades in the scrip of “TSWL” on

delivery based (except two trades of total 5400 shares) at the prevailing market price without doing any unfair trade practice. Following main prayers have been made in the appeal by the Appellant:-

(a) pass an order setting and reversing the impugned order;

(b) alternatively to reduce the penalty imposed on the Appellant.

5. At the outset, we note that the Adjudicating Officer himself has not found two main charges against the Appellant sustainable. However, Appellant appears to be having some connection with some of the promoter group members and only for this the Appellant has been held to be guilty of violating the law in this regard.

6. In this background, we do not see any legal infirmity in the order passed by the Respondent against the Appellant but keeping in view the totality of the facts and circumstances of the case and submissions made at the Bar, we reduce the penalty to Rs. 1 lac while upholding rest of the order against the Appellant.

7. With the above said modification of the impugned order, the appeal stands dismissed. The said penalty shall be paid by the Appellant within a period of two months from the date of receipt of a copy of this order.

Sd/-
Jog Singh
Member &
Presiding Officer (*Offg.*)

Sd/-
A.S. Lamba
Member

26.06.2013
Prepared and compared by:
msb